

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3033 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAVISHANKER U THAKER

Versus

COLLECTOR, KHEDA DIST. & OTHERS

Appearance:

MR SN MAZGAONKAR for Petitioner

MR NN PANDYA for Respondent No. 1 and 2

None present for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/07/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. Reply has not been filed by any of the respondents to this Special Civil Application. It is really shocking that neither the State Government or his concerns nor the Union of India has taken care to file the reply to this Special Civil Application for all these years. Be that as it may, I may now proceed with the merits of this case.

2. The grievance of the petitioner is that though he has participated in the freedom struggle movement of the country in the year 1930, but he was not given pension under the Pension Scheme framed by the respondent for the freedom fighters. The claim of the petitioner has been rejected under the Freedom Fighters Pension Scheme, 1972. The request of the petitioner is declined but it is the case of the petitioner before this Court that in the year 1980 the scheme has been modified, and petitioner should have been given an opportunity to make out his case for the freedom fighters pension under the 1980 scheme. The counsel for the respondent Shri Pandya contended that once the claim of the petitioner has been rejected, it is not open to the petitioner to pray for review of the decision. I do not find any substance in this contention of Shri Pandya. In these matters, the principle of res judicata is not strictly applicable and it is always open and should be open, as it is a matter of pension, to reconsider the matter. Moreover, in the present case, when the scheme has been modified in the year 1980, certainly the petitioner should be given an opportunity to make out his claim under the said scheme. It is a case where matter is to be considered and in case the petitioner makes out his case for grant of freedom fighter pension, no such technical objections can be raised by the respondent. Taking into consideration the fact that the reply has not been filed by the respondents, and the pension scheme of the freedom fighters has been modified in the year 1980, the interest of justice will be served in case this Special Civil Application is disposed of with the direction to the respondents that in case the petitioner file an application for giving him the pension of freedom fighter alongwith the necessary proof of his claim, the respondents may consider the said application according to the law. The petitioner, if so desires, may make an application alongwith all the necessary documents within a period of two months from today. The respondent shall decide the application of the petitioner within three months from the date of receipt thereof. In case the claim of the petitioner is not acceptable, the respondent shall pass a speaking order and a copy of the same may be sent to the petitioner by registered post. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-